

Sherlock Holmes Copyright Case Costs Estate Attorneys' Fees

The case of Sherlock Holmes attempt to demand a license fee for expired copyrights now includes a new chapter: awarding attorneys' fees to the plaintiff who challenged the "unlawful business strategy."

The Seventh Circuit found that Conan Doyle Estate, Ltd. must pay the attorneys' fees for Leslie Klinger, who won a declaratory judgment that he would not be infringing on any rights of the Estate for stories about Sherlock Holmes where the copyrights on those works had expired.

"Unless Klinger is awarded his attorneys' fees, he will have lost money—to be precise, \$25,769.93 (\$30,679.93 - \$5,000)—in winning an appeal in which the defendant's only defense bordered on the frivolous: a Pyrrhic victory if ever there was one," Judge Richard Posner wrote.

Six weeks ago, the Seventh Circuit found that the Estate could not charge a license fee on Conan Doyle's works published before 1923 because the copyrights had expired. The Estate had demanded a license fee of at least \$5,000 from Klinger. Rather than pay the license, Klinger sued and won. ([See our earlier post.](#)) He subsequently asked for attorneys' fees in the amount of \$30,679.93. The Estate opposed the award of attorneys' fees, as Posner wrote, "on the same hopeless grounds that it had urged in its appeal."

Judge Posner noted that the Estate's "business strategy is plain: charge a modest license fee for which there is no legal basis, in the hope that the 'rational' writer or publisher asked for the fee will pay it rather than incur a greater cost, in legal expenses, in challenging the legality of the demand."

Rather than bowing to the demand, Klinger "was a private attorney general, combatting a disreputable business practices—a form of extortion—and he is seeking by the present motion not to obtain a reward but merely to avoid a loss," the appellate court said.

"He has performed a public service—and with substantial risk to himself, for had he lost he would have been out of pocket for the \$69,803.37 in fees and costs incurred at the trial and appellate levels. . . . The willingness of someone in Klinger's position to sue rather than pay Doyle's estate a modest license fee is important because it injects risk into the estate's business model," Posner observed. "For exposing the estate's unlawful business strategy, Klinger deserves a reward but asks only to break even."

Klinger v Conan Doyle Estate Ltd., Seventh Cir. No. 14-1128, issued August 4, 2014.